TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 514

BYRON THORNHILL, PETITIONER,

vs.

THE STATE OF ALABAMA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED NOVEMBER 9, 1939.

CERTIORARI GRANTED DECEMBER 11, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No.

BYRON THORNHILL, PETITIONER,

vs.

THE STATE OF ALABAMA

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF ALABAMA

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 6, 1939.

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[fol. 1] [File endorsement omitted]

IN CIRCUIT COURT OF TUSCALOOSA COUNTY

No. 4243

THE STATE OF ALABAMA

vs.

BYRON THORNHILL

CERTIFICATE OF APPEAL

I, I. N. Hobson, Clerk of the Circuit Court of Tuscaloosa County in and for said County and State, do hereby certify that in the above stated case, which was tried and determined in this Court on the 20th day of December, 1937, and the defendant convicted of the offence of Loitering or Picketing, and that on the 20th day of December, 1937, said defendant was sentenced to a term of hard labor for County for fine and costs which said sentence was suspended pending an appeal to the Court of Appeals of Alabama.

I further certify that on this the — day of ——, 193–, the defendant gave notice in writing of an appeal to the —— Court of Alabama.

Witness my hand and the seal of this Court, this the 20th day of April, 1938.

I. N. Hobson, Clerk of the Circuit Court of Tuscaloosa County, Alabama. (Seal.)

[fol. 2] Order of continuance omitted in printing.

[fol. 3] Organization of court omitted in printing.

IN INFERIOR COURT OF TUSCALOOSA COUNTY

AFFIDAVIT AND WARRANT OF ARREST—Filed Dec. 20, 1937

Personally appeared before me, the undersigned authority in and for said County, J. M. Waldon who, being duly sworn, says on oath that there is probable cause for believing, that affiant does believe that Byron Thornhill whose

name is otherwise unknown to affiant within twelve months before making this affidavit, in said County:

1. Did without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of the Brown Wood Preserving Company, a Corporation, engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by the Brown Wood Preserving Company, a corporation, for the purpose of hindering, delaying or interfering with, or injuring the lawful business or enterprise of the Brown Wood Preserving Company, a corporation.

2. Did without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of the Brown Wood Preserving Company, a corporation, engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed — the Brown Wood Preserving Company, a corporation.

3. Did picket the works or place of business of the Brown Wood Preserving Company, a corporation for the purpose of hindering, delaying, or interfering with or injuring the lawful business or interprise of the Brown Wood Preserving Company, a corporation, against the peace and dignity of the State of Alabama.

J. M. Waldon.

Subscribed and sworn to before me this 20th day of December, 1937. W. E. Lathram, Justice of the Peace.

THE STATE OF ALABAMA,
Tuscaloosa County:

To Any Lawful Officer of Said County, Greetings:

[fol. 4] You Are Hereby Commanded to Arrest Byron Thornhill and bring him before the Inferior Court of Tuscaloosa County, at the present term, of said Court, to answer the State of Alabama, on the charge of Loitering and Picketing, preferred by J. Milton Waldon.

Witness my hand, this 20th day of December, 1937.

W. E. Lathram, Justice of the Peace.

Witness- for the State: Milton Walden, L. T. Simpson, Brownville.

Warrant of Arrest:

The officer arresting may admit the Defendant to bail upon his entering into bond in the sum of Two Hundred Dollars, with two good securities approved by said officer.

W. E. Lathram, Justice of the Peace.

Approved this 20 day of Decbr. 1987.

James A. McCollum, Solicitor.

Received in office this 20 day of December, 193–.

F. M. Shamblin, Sheriff.

Executed by arresting the within named Defendant Byron Thornhill and the said Defendant was committed to Bail in the amount of $200, this 20 day of December, 1937.

F. M. Shamblin, Sheriff, by J. M. Waldon, Deputy Sheriff.

[File endorsement omitted.]

[fol. 5] Appearance bond for $200.00; approved and filed Dec. 20, 1937, omitted in printing.

[fol. 6] In Inferior Court of Tuscaloosa County

State of Alabama

vs.

Byron Thornhill

Demurrer to Affidavit and Warrant—Filed December 20, 1937

Comes the defendant in the above styled cause and demurs to the complaint and affidavit and warrant filed against him and to each section thereof both separately and severally, and as grounds for said demurrer sets down and assigns the following separate and several counts, to-wit:

1. That said complaint does not state an offense cognizable by the law of Alabama.

2. That the statute which the defendant is charged with violating is repugnant to the Constitution of the United States.

3. That the statute which the defendant is charged in said complaint with violating is repugnant to the laws of the United States.

4. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the State of Alabama.

5. That the statute which the defendant is charged with violating in said complaint is repugnant to the Fourteenth Amendment of the Constitution of the United States.

6. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it refuses him the right to peaceful assemblage as guaranteed by the Constitution of the United States.

7. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it contravenes the defendant's right of freedom of speech.

8. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it denies the defendant the right to petition for redress.

9. That the statute which the defendant is charged with violating in said complaint is violative of the National Labor Relations Act.

10. That said complaint does not state an offense against the laws of the State of Alabama.

Respectfully submitted.

[fol. 7] Mayfield & Mayfield, by James J. Mayfield,
Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 8] IN INFERIOR COURT OF TUSCALOOSA COUNTY

[Title omitted]

JUDGMENT ENTRY—Filed Dec. 20, 1937

Dec. 20, 1937, the Defendant being duly arraigned, pleads nolo contendere to Picketing and Loitering, issue being joined on said plea; and after hearing the evidence in this case, the Court is satisfied of the guilt of the Defendant and hereby awards the following punishment: A Fine of $100.00 as punishment and the cost of this proceedings.

H. L. Findley, Judge.

Dec. 20, 1937, the Defendant having failed to pay said Fine and Costs or to secure the same; it is hereby ordered by the Court that he be and hereby is sentenced to perform hard labor for the State of Alabama for the use of Tuscaloosa County a period of 30 Days to pay said Fine, and an additional period of 29 Days @ 75¢ per Day to pay the Costs of this proceedings.

H. L. Findley, Judge.

The Defendant prays an Appeal from the Judgment of this Court to the Present Term of the Circuit Court, which is hereby granted, and his Bond fixed at $300.00.

Clerk's certificate to foregoing transcript omitted in printing.

[File endorsement omitted.]

[fol. 9] IN CIRCUIT COURT OF TUSCALOOSA COUNTY

[Title omitted]

COMPLAINT—Filed Dec. 20, 1937

1. The State of Alabama, by its Solicitor, complains of Byron Thornhill that, within twelve months before the commencement of this prosecution he did without just cause or legal excuse therefor, go near to or loiter about the premises or place of business of another person, firm, corpora-

tion or association of people, to-wit; the Brown Wood Preserving Company, Inc., a corporation, engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by the said Brown Wood Preserving Company, Inc., a corporation, for the purpose of hindering, delaying or interfering with or injuring the lawful business or enterprise of the said Brown Wood Preserving Company, Inc., a corporation.

2. The State of Alabama, by its Solicitor, complains of Byron Thornhill that, within twelve months before the commencement of this prosecution he did without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of another person, firm, corporation or association of people, to-wit: the Brown Wood Preserving, Inc., a corporation, engaged in a lawful business, for the purpose or with the intent of influencing or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by the said Brown Wood Preserving Company, Inc., a corporation.

3. The State of Alabama, by its Solicitor, complains of Byron Thornhill that, within twelve months before the commencement of this prosecution he did picket the works or place of business of another person, firm, corporation or association of people, to-wit, the Brown Wood Preserving Company, Inc., a corporation, for the purpose of hindering, delaying, or interfering with or injuring the lawful business or enterprise of the said Brown Wood Preserving Company, Inc., a corporation.

Gordon Davis, Solicitor 6th Judicial Circuit of Alabama.

[File endorsement omitted.]

[fol. 10] In Circuit Court of Tuscaloosa County

[Title omitted]

Demurrer to Complaint—Filed Dec. 20, 1937

Comes the defendant in the above styled cause and demurs to the complaint filed against him and to each section thereof both separately and severally, and as grounds for said

demurrer sets down and assigns the following separate and several reasons, to-wit:

1. That said complaint does not state an offense cognizable by the law of Alabama.

2. That the statute which the defendant is charged with violating is repugnant to the Constitution of the United States.

3. That the statute which the defendant is charged in said complaint with violating is repugnant to the laws of the United States.

4. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the State of Alabama.

5. That the statute which the defendant is charged with violating in said complaint is repugnant to the Fourteenth Amendment of the Constitution of the United States.

6. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it refuses him the right of peaceful assemblage as guaranteed by the Constitution of the United States.

7. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it contravenes the defendant's right of freedom of speech.

8. That the statute which the defendant is charged with violating in said complaint is repugnant to the Constitution of the United States in that it denies the defendant the right to petition for redress.

9. That the statute which the defendant is charged with violating in said complaint is violative of the National Labor Relations Act.

10. That said complaint does not state an offense against the laws of the State of Alabama.

Respectfully submitted, Mayfield & Mayfield, by James J. Mayfield, Attorneys for Petitioner.

[File endorsement omitted.]

[fol. 11] In Circuit Court of Tuscaloosa County

[Title omitted]

Judgment Entry—December 20, 1937

This case coming on to be heard on this day in this court on appeal from the Inferior Court of Tuscaloosa County, Alabama, comes Gordon Davis, Solicitor who prosecutes for the State, and comes also the defendant in his own proper person and by attorney. The State by its Solicitor files its complaint herein in which it charges the defendant with the offense of Loitering and Picketing. The defendant then being duly arraigned in open court upon the complaint herein charging him with Loitering and Picketing for a plea thereto says he is not guilty. No jury having been demanded or asked for the court proceeds to try this case without a jury. After hearing all of the evidence introduced herein and after considering the same the court is of the opinion that the defendant, Byron Thornhill, is guilty of Loitering and Picketing as charged in the complaint. It is, therefore, considered by the court and it is the order and judgment of the court that the defendant, Byron Thornhill, is guilty of Loitering, and Picketing as charged in the complaint and that he pay a fine of $100.00 together with the costs in this case. And now on this the 20 day of December, 1937, the fine and costs in this case not being presently paid nor judgment confessed therefor as required by law the defendant being present in open court and having been present in his own proper person during the entire time of the trial of this case being asked by the court if he has anything to say why the sentence of the law should not now be pronounced upon him says nothing. It is, therefore, considered by the court and it is the order, judgment, and sentence of the court that the defendant, Byron Thornhill, do and perform hard labor for the County of Tuscaloosa for 30 days to pay said fine of $100.00 and for 43 days additional at the rate of 75¢ per day to pay the costs in this case. The defendant having made known to the Court his desire to prosecute an appeal from the judgment and sentence of this court to the Court of Appeals of Alabama; it is, therefore, considered by the court and it is the order and judgment of the court that the execution of this sentence be suspended pending said appeal and the court fixes the amount of the defendant's appeal bond at $100.00.

[fol. 12] Bond on Appeal for $1000.00 approved and filed Dec. 20, 1937, omitted in printing.

[fol. 13] In Circuit Court of Tuscaloosa County

Bill of Exceptions—Filed March 5, 1938

Be it remembered, That on the trial of the above entitled cause in the Circuit Court of Tuscaloosa County, Alabama, on to-wit December 20, 1937, before the Honorable Henry B. Foster, Judge Presiding, the following proceedings not otherwise appearing of record, were had and done.

Clarence Simpson, a witness for the State, being first duly sworn, testified on direct examination as follows:

My name is Clarence Simpson; I know Byron Thornhill the defendant, and I know J. M. Walden, who swore out the warrant in this case. I was formerly employed by Brown Wood Preserving Company, Inc. a corporation which operates a creosoting plant at Brownville, Alabama, in Tuscaloosa County. On November 24, 1937, a strike was called at the plant of Brown Wood Preserving Company, and the plant has not operated since that time. The Brown Wood Preserving Company operates a railroad track in the yard of its plant. I was employed there at the yard. Sometime after the strike was called, a notice was posted on the premises of the Brown Wood Preserving Company notifying employees that the plant would resume operations. I do not recall when the notice was posted. On the date indicated in the notice I reported at the plant to go to work, and when I reached the plant, I saw Byron Thornhill on the picket line at the plant. A picket line has been maintained around the plant since the time the strike was called, with two picket posts on said line and about six or eight men on each picket post. Three shifts of men stay on the posts in each twenty-four hours. The said picket posts are on the property of Brown Wood Preserving Company, on a private entrance for employees, and not on any public road. I was employed by Brown Wood Preserving Company at the time the strike was called, and I did not work during the duration of the strike; I do not recall the date the notice to resume operations was posted, but in my judgment it was about three weeks after the strike

was called. I do not know whether or not the Company attempted to operate the plant on the morning that I reported for duty, the morning indicated in the notice.

On the morning indicated in the notice that the plant would resume operations, I started to work and had to go by the picket lines. When I reached the picket line, Mr. Thornhill came out and told me they were on a strike and did not want anybody to go up there to work. I then turned and went back to the house, and did not go to work. When Mr. Thornhill said he did not want anybody to go "up there", he was referring to the plant of the Brown Wood Preserving Company. The plant did not begin operations [fol. 14] on the day it was scheduled to begin. When I saw and talked to Mr. Thornhill, he was near the picket line on the property of Brown Wood Preserving Company, in company with six or eight other men. None of the other men said anything to me. I did not see Mr. Thornhill on the picket line at any time except the morning which I have just testified to. I was not a member of the Union. Mr. Thornhill did not tell me that he was connected with the Union in any way; and I do not know that he was President of the Union at the Creosoting Plant. I do not know whether or not Mr. J. M. Walden was present at the picket line that morning. The two pickets posts I have referred to were on approaches that led up to the plant of Brown Wood Preserving Company, and the employees went to the plant on these approaches, which were not on any public road. The occurrence I have testified to took place in Tuscaloosa County, Alabama, within twelve months before the warrant in this case was sworn out.

On cross-examination the witness testified as follows:

Neither Mr. Thornhill nor any other employee threatened me on the occasion testified to. Mr. Thornhill approached me in a peaceable manner, and did not put me in fear; he did not appear to be mad. Brown Wood Preserving Company has railroad tracks leading into the plant. I am familiar with their business in a general way; they get poles which they process at the plant from all around the plant, and ship them from the plant to different places, but I do not know that they ship a great many outside the State of Alabama.

J. M. WALDEN, a witness for the State, being first duly sworn, testified as follows:

This is J. M. Walden. I am Deputy Sheriff of Tuscaloosa County; I know Byron Thornhill, the defendant in this case; I also know Clarence Simpson. I am a member of the Union at Brownville, and the only name I know of the Union is American Federation of Labor. We have only one union there, and that is the only name I know for it. Mr. Thornhill and I belong to the same Union, and we were formerly employed by Brown Wood Preserving Company. On or about November 24, 1937, the day before Thanksgiving, a strike was called at the plant of Brown Wood Preserving Company at Brownville, Alabama. Subsequent to the time the strike was called picket lines were established at said plant, and two picket posts were established, on the road or pathway leading up to the plant, not on the only path, but on the usual path up to the plant, which was not a public highway.. Clarence Simpson was formerly employed at the plant of Brown Wood Preserving Company. Two or three weeks after the strike was called at the plant, [fol. 15] Brown Wood Preserving Company posted notices at the plant that work would be resumed at the plant. I do not recall the exact date the notices were posted. During the strike the pickets had been on the picket lines twenty-four hours a day, working in three shifts of eight hours each. At each picket post there were six or eight men. I say Mr. Byron Thornhill on the picket line on the day the plant was scheduled to resume operations, when he was talking to Clarence Simpson. I heard him say to Clarence Simpson that they were on strike and he would ask him (Simpson) not to go down there to work until some settlement was made of the strike. I did not see Mr. Thornhill talk to anyone else. The plant did not resume operations that day. A fire was put in the crane, and some one took the fire out of the crane. The fire was put into the crane after the conversation which I heard between Mr. Thornhill and Clarence Simpson. Some of the pickets took the fire out of the crane, but I do not know whether or not Byron Thornhill had anything to do with taking out the fire. Byron Thornhill is President of the Union at Brownville. I am a member of the Union. I was present in a meeting in Inferior Court Room in Tuscaloosa, about a week ago and heard what was said by Mr. Thornhill and others in the

conference and heard the agreement that was made. I understood that the meeting was an attempt to conciliate the strike; and that Mr. Thornhill had that intention, and it was also my intention. There were some efforts at adjustment of the strike. Mr. Thornhill was an employee of the Company before the strike; if I understood it, they made assurance that there would be no work going on there, they would not try to go to work, if I understood it right. I have not been present in any meetings of the Local at Brownville when Mr. Thornhill was present since the strike was called, nor immediately preceding the calling of the strike; the meetings which I attended where he was present were held some two or three weeks before the strike was called, and the strike was not discussed at that time, nor the question of picketing the plant. Brown Wood Preserving Company employed about 100 men, and I believe there were 96 of them members of the Union.

On the morning about which I have testified I did not see anyone at work, but saw Clarence Simpson going to work, and I saw some men at the crane. After we came back to the plant we could not see the crane from where we were. The railroad track was close to the picket post.

On cross-examination, the witness J. M. Walden testified as follows:

I know where Clarence Simpson lives, he lives on prop-[fol. 16] erty of Brown Wood Preserving Company; and also does some trading on Company property. The Union meets on property of Brown Wood Preserving Company; the Company has not made demand on the men, since the strike was called, not to come on the Company property. The employees get their mail from a U. S. Post-office located on Company property. I do not know of any notice posted or word circulated that the men were not to come on Company property. Practically all the men who work in the Plant of Brown Wood Preserving Company live on Company property. I do not know whether or not Brown Wood Preserving Company ships poles out of the State of Alabama. At the time Mr. Thornhill and Clarence Simpson were talking to each other, there was no one else present, and I heard no harsh words and saw nothing threatening in the manner of either man. The picket posts which I have referred to were tents in which the men stayed to keep warm in cold weather.

On re-direct Examination, the witness J. M. Walden testified as follows:

The tents which were put up on the picket lines were put there after the strike was called, for the pickets to stay in out of the weather. I had been employed by Brown Wood Preserving Company prior to the strike, but no one was working at the time I have testified to, except the officials. On the day which I have testified to, there was a notice posted notifying the employees to come back to work. I suppose Mr. Thornhill was invited back to work; he had been laid off for sometime before the strike was called. The notice invited those men back to work who quit when the strike was called, and did not invite back those who had been laid off prior to the strike. I cannot tell exactly what the notice contained. I read the notice; I do not know whether or not Mr. Thornhill read the notice; I did not hear him say whether or not he read it. I was laid off from work at a time when there was no one working but the boss man and me; I don't suppose I was laid off at the same time Mr. Thornhill was laid off. As I understood the notice which was posted, only those employees who were working at the time of the strike, were invited back to work.

The witness, Clarence Simpson, being recalled for further recross examination, testified as follows:

I did not read the notice which was posted by the Brown Wood Preserving Company; my boss man, Carl Johnson, told me the contents of the notice. Mr. Johnson is foreman of the department in which I work. He invited me back to work on the morning testified about.

DEFENDANT'S MOTION TO EXCLUDE EVIDENCE

The defendant then and there moved the Court to exclude [fol. 17] all the testimony taken at the trial and for grounds of said motion, assigned the following grounds:

1. That said testimony is insufficient to sustain a conviction.

2. That the statute under which the defendant is being prosecuted is violative of the Constitution of the State of Alabama, and of the Constitution of the United States.

The Court here asked counsel for defendant if he insisted upon his motion to exclude all the evidence and discharge

the defendant on account of the insufficiency of the evidence. Defendant's counsel stated that the only question he wanted to raise was the constitutionality of the Alabama anti-picketing statute, and claimed that said statute was violative of the Constitution of the United States and of the State of Alabama, and that was really the question that the Court undertook to determine. The defendant expressed a desire to test the constitutionality of the anti-picketing statute, and that could not be done by him, except upon a conviction.

The Court overruled the motion and defendant duly excepted.

The defendant did not offer any testimony.

This was all the evidence in the case.

ORDER SETTLING BILL OF EXCEPTIONS.

Wherefore, the defendant tenders this, his Bill of Exceptions, and prays that the same may be signed and sealed and made a part of the record in this cause, which is accordingly done in term time on this the 5th day of March, 1938.

Henry B. Foster, Judge Presiding.

The above and foregoing Bill of Exceptions was duly presented to me within the time allowed for presenting the same, on this the 5th day of March, 1938.

Henry B. Foster, Judge Presiding.

[File endorsement omitted.]

[fol. 18] Citation, in usual form; showing service on Gordon Davis, April 6, 1938, omitted in printing.

IN CIRCUIT COURT OF TUSCALOOSA COUNTY

CERTIFICATE OF APPEAL

I, I. N. Hobson, Clerk of the Tuscaloosa County Circuit Court, hereby certify that the foregoing pages, from 1 to 16 inclusive, contain a full and complete transcript of the record and proceedings of the said Tuscaloosa County Circuit Court in a cause therein pending, wherein The State of Alabama is Plaintiff and Byron Thornhill is Defendant;

that the said Byron Thornhill did, on the 20th day of December, 1937, obtain an appeal to the Present Term, 1938, of the Court of Appeals of Alabama, all of which I hereby certify to said Court of Appeals.

Witness my hand, this 19 day of August, 1938.

I. N. Hobson, Clerk. (Seal.)

[fol. 19] IN COURT OF APPEALS OF ALABAMA

Present: All the Judges.

Tuscaloosa Circuit Court

6 Div. 334

BYRON THORNHILL

vs.

THE STATE

ORDER OF SUBMISSION—December 1, 1938

Come the parties by attorneys, and submit this cause on briefs for decision.

[fol. 20] IN COURT OF APPEALS OF ALABAMA

Present: All the Judges.

Tuscaloosa Circuit Court

6 Div. 334

BYRON THORNHILL

vs.

THE STATE

JUDGMENT—January 17, 1939

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the court, it is considered that in the record and proceedings of the Circuit

Court there is no error. It is therefore considered that the judgment of the Circuit Court be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this Court and of the Circuit Court.

D

[fol. 21] IN COURT OF APPEALS OF ALABAMA

October Term, 1938-39

6 Div. 334

BYRON THORNHILL

v.

STATE

Appealed from Tuscaloosa Circuit Court

OPINION

RICE, Judge:

Section 3448 of the Code of 1923 reads as follows:

"Any person or persons, who, without a just cause or legal excuse therefor, go near to or loiter about the premises or place of business of any other person, firm, corporation, or association of people, engaged in a lawful business, for the purpose, or with intent of influencing, or inducing other persons not to trade with, buy from, sell to, have business dealings with, or be employed by such persons, firm, corporation, or association, or who picket the works or place of business of such other persons, firms, corporations, or associations of persons, for the purpose of hindering, delaying, or interfering with or injuring any lawful business or enterprise of another, shall be guilty of a misdemeanor; but nothing herein shall prevent any person from soliciting trade or business for a competitive business."

Appellant was convicted of the offense denounced by the above Code section.

It seems clear enough that the evidence adduced upon the trial was sufficient to bring appellant's actions, for which he was being prosecuted, within the purview of the prohibition implied in said Statute.

So, as conceded by able counsel here representing appellant, "the only question involved in this appeal is the constitutionality *vel non* of Section 3448 of the Code of Alabama of 1923."

[fol. 22] And, as further conceded by the said counsel, this exact question has been heretofore decided both by this Court and the Supreme Court—this Court of course merely following the decision by the Supreme Court, as it was required to do (Code 1923 Sec. 7318)—adversely to the contentions here urged against the validity of said statute. See O'Rourke v. City of Birmingham 27 Ala. App. 133, 168 So. 206, Cert. denied Ib. 232 Ala. 355, 168 So. 209; and Hardie-Tynes Mfg. Co. v. Cruise et al. 189 Ala. 66, 66 So. 657.

It results, there is nothing for us to do but affirm the judgment of conviction. Code Sec. 7318, Supra.

Which we hereby do.

Affirmed.

[fol. 23] In Court of Appeals of Alabama

[Title omitted]

Application for Rehearing Filed Ex Mero Motu

Comes the appellant and moves the Court to set aside the judgment of the Court rendered on the 17th day of January, 1939, affirming the judgment of the lower court in said cause, and to grant to appellant a rehearing in said cause, and in support of said application for rehearing, attaches the following brief and argument thereto.

This 12th day of February, 1939.

James J. Mayfield, Attorney for the Appellant.

The undersigned, of counsel for appellant, certifies that a copy of the foregoing application for a rehearing and brief and argument in support thereof was this day personally mailed by the undersigned, postage prepaid, to Thomas S. Lawson, Attorney General of the State of Alabama at Montgomery, Alabama.

This 12th day of February, 1939.

James J. Mayfield, Attorney for the Appellant.

[fol. 24] IN COURT OF APPEALS OF ALABAMA

CERTIFICATE OF RECALL PENDING CONSIDERATION OF APPLICATION FOR REHEARING

To the Clerk of the Circuit Court of Tuscaloosa County, Greeting:

Whereas, in the matter of Byron Thornhill, Appellant, vs. The State of Alabama, Appellee, recently pending in the Court of Appeals of Alabama, on appeal from the said Circuit Court of Tuscaloosa County, our Court of Appeals did on the 17th day of January, 1939, render a Judgment of Affirmance in said cause; and,

Whereas, a certificate of such action of the Court of Appeals was duly issued to you, and thereafter an application for a rehearing of said cause was filed ex mero motu in this Court on the 11th day of February, 1939;

Now, it is hereby certified, that our Court of Appeals, or one of the Justices thereof, did, on the 11th day of February, 1939, order that the said certificate be recalled.

And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 11th day of February, 1939.

Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama.

[fol. 25] IN COURT OF APPEALS OF ALABAMA

Present: All the Judges.

[Title omitted]

ORDER OVERRULING APPLICATION FOR REHEARING—May 23, 1939

It is ordered that the application for rehearing filed by the Appellant ex mero motu in this cause on February 11th, 1939, after being duly examined and considered by the Court be and is overruled.

[fol. 26] IN COURT OF APPEALS OF ALABAMA

CERTIFICATE OF RECALL PENDING CONSIDERATION OF THE PETITION FOR CERTIORARI FILED IN THE SUPREME COURT OF ALABAMA

To the Clerk of the Circuit Court of Tuscaloosa County, Greeting:

Whereas, in the matter of Byron Thornhill, Appellant vs. The State of Alabama, Appellee recently pending in the Court of Appeals of Alabama, on appeal from the said Circuit Court of Tuscaloosa County, our Court of Appeals did on the 17th day of January, 1939, render a Judgment of Affirmance in said cause; and, thereafter an application for a rehearing of said cause filed ex mero motu in this Court on the 11th day of February, 1939, was overruled by this Court on the 23rd day of May, 1939.

Whereas, a certificate of such action of the Court of Appeals was duly issued to you, and thereafter a Petition for Certiorari to the Court of Appeals in said cause was filed in the Supreme Court on the 7th day of June, 1939.

Now, it is hereby certified, that our Court of Appeals did on the 9th day of June, 1939, order that the said certificate of affirmance be recalled, pending consideration of the Petition for Certiorari to the Court of Appeals filed in the Supreme Court June 7th, 1939. And you will accordingly return the same to this office at once, together with copy of the opinion in said cause issued to you.

Witness, Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama, at the Capitol, this the 9th day of June, 1939.

Charles Bricken, Jr., Clerk of the Court of Appeals of Alabama.

[fol. 27] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 28] IN SUPREME COURT OF ALABAMA

6 Div. 530

Ex parte: Byron Thornhill

PETITION FOR CERTIORARI TO THE COURT OF APPEALS

In re: BYRON THORNHILL

vs.

THE STATE OF ALABAMA

[fol. 29] IN THE COURT OF APPEALS AND APPEALED FROM TUSCALOOSA COUNTY CIRCUIT COURT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of Alabama:

Your petitioner, Byron Thornhill, hereby respectfully petitions this Honorable Court to review and determine the decision rendered by the Court of Appeals in that certain appeal in said court numbered and styled 6th Div. 334, Byron Thornhill vs. The State of Alabama, handed down in said Court of Appeals on the 23rd day of May, 1939. And petitioner respectfully shows unto this Honorable Court as follows:

1. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama 1923, was not violative of the Constitution of Alabama, 1901.

2. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of the Bill of Rights of the Constitution of Alabama, 1901.

3. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of the citizen's right of freedom of speech, and to publish his sentiments on all subjects as guaranteed by Article 1, Section 4 of the Constitution of Alabama.

4. That the Court of Appeals erred in attempting to extend the purview of Section 3448 of the Code of Alabama, 1923, to the defendant and the facts at Bar.

5. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of

the Fourteenth Amendment of the Constitution of the United States.

[fol. 30] 6. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of the Defendant's right of peaceful assembly as guaranteed by Article 1, Section 4 of the Constitution of Alabama, 1901.

7. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of the due process clause of the Constitution of the United States.

8. That the Court of Appeals erred in holding that Section 3448 of the Code of Alabama, 1923, was not violative of the Constitution of the United States.

Wherefore, your petitioner prays that a writ of certiorari, or such other appropriate and necessary writ, be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Alabama, commanding and requiring said court to certify and send to this Honorable Court, on a day certain, to be designated therein, a full and complete transcript of the record of all the proceedings of the Court of Appeals in said case, numbered and styled as aforesaid to the end that said case may be reviewed and determined by the Supreme Court of Alabama in consonance with law, and that this Honorable Court thereupon proceed to review and correct the errors complained of and to reverse the said judgment of the Court of Appeals, or render such judgment as said court shall have rendered, and suggesting to said Court the stay or recall of its certificate of judgment pending the determination of this petition and decision by this Honorable Court in said cause.

Byron Thornhill, Petitioner, by James J. Mayfield, Attorney for Petitioner.

We hereby certify a copy of the foregoing petition for certiorari was placed in the United States Government mail, properly addressed, and with necessary postage thereon, and forwarded to Hon. Thomas S. Lawson, Attorney general for the State of Alabama, on this the 6th day of June, 1939.

Witness our hands this the 6th day of June, 1939.

Mayfield & Mayfield, by James J. Mayfield, Attorneys for Petitioner.

[fol. 31] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OF SUBMISSION—June 7, 1939

Come the parties by attorneys, and submit this cause on briefs for decision.

[fol. 32] IN SUPREME COURT OF ALABAMA

[Title omitted]

Present:

All the Justices.

ORDER DENYING PETITION FOR CERTIORARI—June 15, 1939

Comes the petitioner by attorneys, and the petition for the Writ of Certiorari to the Court of Appeals being submitted on briefs and duly examined and understood by the Court, it is considered that said petition be and the same is hereby denied at the cost of the petitioner.

[fol. 33] IN SUPREME COURT OF ALABAMA

CERTIFICATE OF JUDGMENT

To the Clerk of the Court of Appeals of the State of Alabama, Greeting:

Whereas, by petition in the Supreme Court of Alabama duly filed on the 7th day of June, 1939, in this Court styled: Ex parte Byron Thornhill, Petitioner it was prayed that the Record and Proceedings of said Court of Appeals in a certain cause lately therein pending and proceeding to judgment, appealed from the Circuit Court of Tuscaloosa County, between Byron Thornhill, Appellant, and State of Alabama, Appellee by which judgment it was considered adversely to said petitioner, he brought before our Supreme Court by the writ of certiorari issued out of this Court to said Court of Appeals, for review and determination in consonance with law:

Now, it is hereby certify, That it was thereupon considered by our Supreme Court, on the 15th day of June,

1939, that said application for the Writ of Certiorari to the Court of Appeals be overruled and denied, at the cost of the petitioner.

Witness, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Capitol, this the 15th day of June, 1939.

J. Render Thomas, Clerk of the Supreme Court.

[fol. 34] IN SUPREME COURT OF ALABAMA

[Title omitted]

PETITION FOR STAY

To the Honorable Justices of the Supreme Court of Alabama:

MR. JUSTICE ANDERSON, Presiding:

Be It Remembered, that on the 15th day of June, 1939, that this Honorable Court denied certiorari to the Court of Appeals of Alabama, in the above styled cause.

Whereas, the said Byron Thornhill is desirous of having the issues in said cause determined by the Supreme Court of the United States. Particularly, to have that Honorable Body determine whether or not Section 3448 of the Code of Alabama of 1923 contravenes the Constitution of the United States of America.

And Whereas, the said Byron Thornhill is praying the Supreme Court of the United States to grant a Writ of Certiorari directing that the record in this cause be sent up to the Supreme Court of the United States for review.

Therefore, the said Byron Thornhill prays that this Honorable Court will enter the necessary and proper order suspending execution of the judgment and sentence in this cause, and holding the same in abeyance until such time as the Supreme Court of the United States may grant, or deny his aforesaid petition for certiorari.

The Petitioner prays that if he has been mistaken in the relief to which he is entitled, or has improperly pled the same, that this Honorable Body will grant him such relief, as the right and justice of this cause may require.

Respectfully submitted, Mayfield & Mayfield, by James J. Mayfield, Attorney for Byron Thornhill.

[fol. 35] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER GRANTING PETITION FOR STAY

Whereas, Byron Thornhill did on the 5th day of July, 1939, file his petition in this Court requesting that this Court or the Chief Justice thereof enter an order staying or suspending the execution of the judgment and sentence in this cause pending the application of petitioner for a Writ of Certiorari to the Supreme Court of the United States.

Upon consideration of said petition it is ordered by John C. Anderson, as Chief Justice of the Supreme Court of Alabama that the prayer of said petition be granted. It is further ordered that the certificate of affirmance by the Court of Appeals of Alabama and the mandate thereunder be recalled and stayed and held in abeyance and the execution of the judgment and sentence be stayed until final disposition shall have been made of said cause by the Supreme Court of the United States and until the further orders of this Court.

Endorsement: "Granted July 5th, 1939, Jno. C. Anderson, Chief Justice."

[fol. 36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

On consideration of the application of counsel for petitioner,

It is Ordered that the time for filing petition for certiorari in the above-entitled cause be and same hereby is extended for period of 60 days from this date.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Done this the 12th day of September, 1939.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 11, 1939

The petition herein for a writ of certiorari to the Court of Appeals of the State of Alabama is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5384)